

Docket No.: U2054.0155
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Tsuneo Nakata

Application No.: 10/526,958

Confirmation No.: 9916

Filed: January 7, 2005

Art Unit: 2616

For: LOAD DISTRIBUTING METHOD, NODE,
AND CONTROL PROGRAM

Examiner: Lee, Andrew Chung
Cheung

INFORMATION DISCLOSURE STATEMENT (IDS)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Pursuant to 37 CFR 1.56, 1.97 and 1.98, the attention of the Patent and Trademark Office is hereby directed to the reference listed on the attached PTO/SB/08. It is respectfully requested that the information be expressly considered during the prosecution of this application, and that the reference be made of record therein and appear among the "References Cited" on any patent to issue therefrom.

Timing of Filing of the Information Disclosure Statement:

- ☐ This IDS is being filed before the First Office Action¹.
- ☒ This IDS is being filed after the issuance of the First Office Action but before the issuance of a Final Office Action².

- ☐ This IDS is being filed after the issuance of a Final Office Action, Ex Parte Quayle Action or Notice of Allowance but before the payment of the Issue Fee³.

Certifications:

If checked, the undersigned makes the following statement(s):

- ☒ Statement under 37 CFR § 1.97(e):

Each item of information contained in this information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this information disclosure statement; or

No item of information contained in this information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the undersigned after making reasonable inquiry, no item of information contained in this information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.

- ☐ Statement Under 37 C.F.R. § 1.704(d):

¹ The IDS should, where possible, include a certification under 37 C.F.R. §1.97(e).

² The IDS *must* include *either* a certification under 37 C.F.R. §1.97(e) *or* the fee set forth in 37 C.F.R. §1.17(p).

³ The IDS *must* include *both* a certification under 37 C.F.R. §1.97(e) *and* the fee set forth in 37 C.F.R. §1.17(p).

Each item of information contained in this information disclosure statement was cited in a communication from a foreign patent office in a counterpart application less than thirty days prior to the filing of this information disclosure statement.

Fee Required by 37 C.F.R. § 1.97(c)(2) or 1.97(d)(2):

☐ If checked, the fee of \$180.00 set forth in 37 C.F.R. §1.17(p) is attached.

Copies of Information:

In accordance with 37 C.F.R. §1.98(a), the following are enclosed:

- ☒ A legible copy⁴ of each document (or relevant portion thereof) cited in the attached PTO/SB/08, except for U.S. patent and U.S. published applications.
- ☒ With respect to any information which is not in English, a concise explanation of the relevance, as it is presently understood by the individual designated in § 1.56(c) most knowledgeable about the content of the information, is attached.

This concise explanation is provided by way of:

☐ A translation of the relevant portions of the non-English language information⁵;

⁴ A legible copy of the document is not required if (1) the information was previously cited by, or submitted to, the Office and considered by the Office in a prior U.S. application to which this application claims priority, provided that the prior application is properly identified in this IDS, and (2) the IDS submitted in the earlier application complies with 37 C.F.R. § 1.98(a) – (c). This exception does not apply to information cited in an International Application.

⁵ 37 C.F.R. §1.98(a)(3)(ii) *requires* that an English language translation be provided when a translation of the document, or portion thereof, “is within the possession, custody or control of, or is readily available to any individual designated in 37 C.F.R. § 1.56(c).”

- ☐ A statement explaining the relevant portions of the non-English language information;
- ☒ A copy [and, where not in the English language, a translation] of at least the relevant portion(s)⁶ of the communication from a foreign patent office in a counterpart foreign application (Chinese Office Action, dated May 8, 2009) in which the information was cited; or
- ☐ This information is contained in the specification of the present application.

☐ In accordance with 37 C.F.R. 1.98(d), copies of the cited documents are not enclosed as they were provided in application Serial No. _____, filed _____, which the present application relies upon for an earlier effective filing date under 35 U.S.C. 120.

Materiality:

Whether or not the information and references disclosed in this Information Disclosure Statement is "material" pursuant to 37 CFR 1.56, this submission is not intended to constitute an admission that any patent, publication or other information referred to therein is "prior art" for this invention unless specifically designated as such.

In accordance with 37 CFR 1.97(g), the filing of this Information Disclosure Statement shall not be construed to mean that a search has been made or that no other material information as defined in 37 CFR 1.56(a) exists.

It is submitted that the Information Disclosure Statement is in compliance with 37 CFR 1.98 and the Examiner is respectfully requested to consider the listed references.

In the event the actual fee is inadvertently not enclosed or if any additional fee during the prosecution of this application is not paid, the Patent Office is authorized to charge the underpayment to Deposit Account No. 50-2215, under matter number U2054.0155.

Dated: July 17, 2009

Respectfully submitted,

Electronic Signature: /Richard LaCava/
Richard LaCava

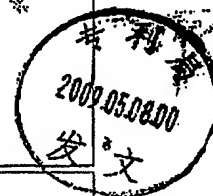
Registration No.: 41,135
DICKSTEIN SHAPIRO LLP
1177 Avenue of the Americas
41st Floor
New York, New York 10036-2714
(212) 277-6500
Attorney for Applicant

⁶ The relevant portion is that portion which indicates the degree of relevance found by the foreign patent office. This may be an explanation of which portion of the of the reference is particularly relevant, to which claims it applies, or merely an "X", "Y", or "A" indication on a search report. MPEP §609 III A(3).



中华人民共和国国家知识产权局

100032 北京市西城区金融街 27 号投资广场 B 座 19 层 中国专利代理(香港)有限公司 浦柏明,刘杰	发文日.
申请号: 2005800021702	
申请人: 日本电气株式会社	
发明名称: 负载分散方法、节点和控制程序	



第一次审查意见通知书

0653033P

(进入国家阶段的 PCT 申请)

- ☒ 应申请人提出的实审请求,根据专利法第 35 条第 1 款的规定,国家知识产权局对上述发明专利申请进行实质审查。
☐ 根据专利法第 35 条第 2 款的规定,国家知识产权局决定自行对上述发明专利申请进行审查。
- ☒ 申请人要求以其在:
JP 专利局的申请日 2004 年 01 月 09 日为优先权日,
JP 专利局的申请日 2004 年 09 月 07 日为优先权日,
JP 专利局的申请日 2005 年 01 月 06 日为优先权日。
- ☐ 申请人于 年 月 日和 年 月 日以及 年 月 日提交了修改文件。
经审查,申请人于 年 月 日提交的 不符合专利法实施细则第 51 条第 1 款的规定。

- ☐
4. ☒ 审查是针对原始提交的国际申请的中文译文进行的。

23 SEP 2009

- ☐ 审查是针对下述申请文件进行的:

- ☐ 说明书 第 页,按照进入中国国家阶段时提交的国际申请文件的中文文本;
第 页,按照专利性国际初步报告附件的中文文本;
第 页,按照依据专利合作条约第 28 条或 41 条规定所提交的修改文件;
第 页,按照依据专利法实施细则第 51 条第 1 款规定所提交的修改文件;
第 页,按照 年 月 日所提交的修改文件。

- ☐ 权利要求 第 项,按照进入中国国家阶段时提交的国际申请文件的中文文本;
第 项,按照依据专利合作条约第 19 条规定所提交的修改文件的中文文本;
第 项,按照专利性国际初步报告附件的中文文本;
第 项,按照依据专利合作条约第 28 条或 41 条规定所提交的修改文件;
第 项,按照依据专利法实施细则第 51 条第 1 款规定所提交的修改文件;
第 项,按照 年 月 日所提交的修改文件。

- ☐ 附图 第 页,按照进入中国国家阶段时提交的国际申请文件的中文文本;
第 页,按照专利性国际初步报告附件的中文文本;
第 页,按照依据专利合作条约第 28 条或 41 条规定所提交的修改文件;
第 页,按照依据专利法实施细则第 51 条第 1 款规定所提交的修改文件;
第 页,按照 年 月 日所提交的修改文件。

21302
2008.7



回函请寄: 100088 北京市海淀区前门桥西土城路 6 号 国家知识产权局专利局受理处收
(注: 凡寄给审查员个人的信函不具有法律效力)

申请号 2005800021702



☒本通知书引用下述对比文件(其编号在今后的审查过程中继续沿用):

编号

文件号或名称

公开日期(或抵触申请的申请日)

1

JP 特開 2003-188907A

2003-7-4

5. 审查的结论性意见:

☐关于说明书:

- ☐申请的内容属于专利法第 5 条规定的不授予专利权的范围。
- ☐说明书不符合专利法第 26 条第 3 款的规定。
- ☐说明书不符合专利法第 33 条的规定。
- ☐说明书的撰写不符合专利法实施细则第 18 条的规定。

☒关于权利要求书:

- ☒权利要求 1 不具备专利法第 22 条第 2 款规定的新颖性。
- ☒权利要求 3-5、14 不具备专利法第 22 条第 3 款规定的创造性。
- ☒权利要求 1 不具备专利法第 22 条第 4 款规定的实用性。
- ☒权利要求 27-39、42 属于专利法第 25 条规定的不授予专利权的范围。
- ☐权利要求 1 不符合专利法第 26 条第 4 款的规定。
- ☐权利要求 1 不符合专利法第 31 条第 1 款的规定。
- ☐权利要求 1 不符合专利法第 33 条的规定。
- ☐权利要求 1 不符合专利法实施细则第 2 条第 1 款的规定。
- ☐权利要求 1 不符合专利法实施细则第 13 条第 1 款的规定。
- ☒权利要求 2、8-10、12、13、15、20、25、26、40 不符合专利法实施细则第 20 条的规定。
- ☐权利要求 1 不符合专利法实施细则第 21 条的规定。
- ☐权利要求 1 不符合专利法实施细则第 22 条的规定。
- ☐权利要求 1 不符合专利法实施细则第 23 条的规定。

☐分案的申请不符合专利法实施细则第 43 条第 1 款的规定。

上述结论性意见的具体分析见本通知书的正文部分。

6. 基于上述结论性意见,审查员认为:

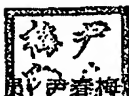
- ☐申请人应按照通知书正文部分提出的要求,对申请文件进行修改。
- ☒申请人应在意见陈述书中论述其专利申请可以被授予专利权的理由,并对通知书正文部分中指出的不符合规定之处进行修改,否则将不能授予专利权。
- ☐专利申请中没有可以被授予专利权的实质性内容,如果申请人没有陈述理由或者陈述理由不充分,其申请将被驳回。

7. 申请人应注意下述事项:

- (1) 根据专利法第 37 条的规定,申请人应在收到本通知书之日起的肆个月内陈述意见,如果申请人无正当理由逾期不答复,其申请将被视为撤回。
- (2) 申请人对其申请的修改应符合专利法第 33 条的规定,修改文本应一式两份,其格式应符合审查指南的有关规定。
- (3) 申请人的意见陈述书和/或修改文本应邮寄或递交国家知识产权局专利局受理处,凡未邮寄或递交给受理处的文件不具备法律效力。
- (4) 未经预约,申请人和/或代理人不得前来国家知识产权局专利局与审查员举行会晤。

8. 本通知书正文部分共有 3 页,并附有下列附件:

☒引用的对比文件的复印件共 1 份 8 页。



审查员 尹春梅(9464)

2009 年 4 月 14 日

审查部门

审查协作中心

21302
2008.7



回函请寄: 100088 北京市海淀区蓟门桥西土城路 6 号 国家知识产权局专利局受理处收
(注: 凡寄给审查员个人的信函不具有法律效力)

第一次审查意见通知书正文

申请号：2005800021702

经审查，具体意见如下：

一、权利要求27-39、42请求保护的主体属于专利法第二十五条第一款第(二)项智力活动的规则和方法，不能授予专利权。

1、权利要求27、28、42请求保护一种节点控制程序，程序本身是人的思维活动的结果，没有采用技术手段或者利用自然规律，也未解决技术问题和产生技术效果，不构成技术方案，因此权利要求27、28、41请求保护的主体属于专利法第二十五条第一款第(二)项智力活动的规则和方法，不能授予专利权。

权利要求29-39直接或间接引用权利要求28，其限定部分也是对程序的进一步限定，基于上述相同的理由，权利要求29-39请求保护的主体属于专利法第二十五条第一款第(二)项智力活动的规则和方法，不能授予专利权。

二、权利要求1不具备专利法第二十二条第二款规定的新颖性，权利要求3-5、14不具备专利法第二十二条第三款规定的创造性。

1、权利要求1请求保护一种负载分散方法，对比文件1(JP特开2003-188907A，第0035-0039段，图4、5)公开了一种节点的负载的分散方法，具体特征如下：该节点(相当于权利要求1的发送节点)能够根据来自移动站(相当于权利要求1的节点)的接收状态报告(相当于权利要求1的通道状态报告)更新路由表以从多路候选传输路径中选择传输路径，该节点根据从第0个到第N个路由信息的顺序顺次选择候选传输路径，并向所选择的候选传输路径传送一个数据包(相当于权利要求1的发送历史)，当在定时器的时间内未接收到应答ACK数据包时，则路由信息表中相应的第n个候选传输路径的优先级下降。虽然对比文件1没有明确的文字记载已发送分组的标识信息，但应答ACK数据包是对已发送分组的确定，其中必然包含已发送分组的标识信息，也就是说，对比文件1隐含公开了上述特征。由此可见，对比文件1公开了权利要求1的全部技术特征，技术领域、所解决的技术问题、技术方案和预期效果相同，因此权利要求1请求保护的技术方案不具备专利法第二十二条第二款规定的新颖性。

2、权利要求3-5分别引用权利要求1，对于本领域的技术人员来说，通道状态信息包括通道的延迟、发送速率或负载，属于本领域的常用技术手段。因此，在对比文件1的基础上结合本领域常用的技术手段得到权利要求3-5的技术方案，对本领域的技术人员来说是显而易见的，权利要求3-5请求保护的技术方案不具备突出的实质性特点和显著的进步，因此不具备专利法第二十二条第三款规定的创造性。

2、权利要求14请求保护一种节点，对比文件1（参见同上）公开了一种节点，具体特征如下：该节点能够根据来自移动站的接收状态报告（相当于权利要求14的通道状态报告）更新路由表以从多路候选传输路径中选择传输路径，该节点根据从第0个到第N个路由信息的顺序顺次选择候选传输路径，并向所选择的候选传输路径传送一个数据包（相当于权利要求14的发送历史），当在定时器的时间内未接收到应答ACK数据包时，则路由信息表中相应的第n个候选传输路径的优先级下降。虽然对比文件1没有明确的文字记载已发送分组的标识信息，但应答ACK数据包是对已发送分组的确定，其中必然包含已发送分组的标识信息，也就是说，对比文件1隐含公开了上述特征。权利要求14和对比文件1相比，区别在于，权利要求14的节点包含一个单元，对比文件1的节点实现了该单元的功能，对于本领域的技术人员来说，在已知实现其功能的基础上，设置一个单元来实现，可以根据实际需要来设定，这属于本领域的常用技术手段。因此，在对比文件1的基础上结合本领域常用的技术手段得到权利要求14的技术方案，对本领域的技术人员来说是显而易见的，权利要求14请求保护的技术方案不具备突出的实质性特点和显著的进步，因此不具备专利法第二十二条第三款规定的创造性。

三、权利要求2、8-10、12、13、15、20、25、26、40不符合专利法实施细则第二十条第一款清楚的规定。

1、权利要求2不清楚：①第3-5行“存储关于该通道状态的通道状态信息、上述通道状态信息生效的时间或者分组标识信息”表示或者存储通道状态信息和生效的时间、或者存储通道状态信息和分组标识信息，还是表示存储三者之一，是不明确的，②第6-7行“基于通道状态信息、在上述通道状态信息生效的时间之后的分组发送历史或者上述已发送分组的标识信息确定”表示或者基于通道状态信息和生效的时间之后的分组发送历史确定、或者基于通道状态信息和标识信息确定，还是表示基于三者之一确定，是不明确的，③第7行“上述已发送分组”缺乏引用基础，“已发送分组的标识信息”和第4-5行“分组标识信息”所指是否相同不清楚。

2、权利要求8引用权利要求1，其“选择在接收节点估算的接收完成时间为最早的通道作为分组发送通道”，其中估算的依据是什么、是否和权利要求1的第4-7行的信息有关联不清楚。

权利要求9引用权利要求1，其“选择在接收节点到特定时间为止能完成接收的数据量的估算值最大的通道作为分组发送通道”，其中估算值的估算依据是什么、是否和权利要求1的第4-7行的信息有关联不清楚。

权利要求10“根据估算的当前通道状态”的估算依据是什么、是否和权利要求1

的第4-7行的信息有关联不清楚。

3、权利要求12不清楚：①具有“通道选择或发送中断的判断”的表述，其引用的权利要求1并未出现“发送中断”，那么这里的“发送中断”与权利要求1的方法之间有什么关联不清楚，②“发送数据”与权利要求1第2行的“分组”所指是否相同不清楚，如相同应采用同一名称，如不同申请人应进行解释。

权利要求25存在同样缺陷。

4、权利要求13第5、7-8行“上述选定”缺乏引用基础。

权利要求26第6行存在同样缺陷。

5、权利要求15不清楚：①第3行“发送节点”与第1行“节点”所指是否相同不清楚，如相同应采用同一名称，如不同申请人应进行解释，②第5行的“分组的标识信息”在该方案中用于做什么不清楚，③第7行的“可用分组发送历史”和第9行“分组发送历史”所指是否相同不清楚，如相同应采用同一名称，如不同申请人应进行解释。

6、权利要求20“调度手段”与权利要求15“调度单元”所指相同，应统一术语。

7、权利要求26请求保护一种节点，包含“表”，作为装置权利要求，“表”并非节点的结构组成部分，这种表述方式是不清楚的。

8、权利要求40不清楚：①第4行“上述发送节点”缺乏引用基础，②第8-9行的表述意味着“通道状态的信息”和“分组标识信息”两者是并列的，第10-11行的表述“包含在上述通道状态的信息中的分组标识信息”意味着分组标识信息属于通道状态信息，这样前后的表述矛盾，是不清楚的。

申请人需注意，修改应符合专利法第三十三条的规定，同时提交重新打印的替换页和在原文复制件作出修改的对照页，且应陈述修改的依据和理由。

审查员：尹春梅

代码：9464

CPEL0653033P

State Intellectual Property Office, P.R. China

Address : Receiving Section of the Chinese Patent Office, No. 6 Tacheng Road West, Haidian District, Beijing. Postal code: 100088

Applicant	NEC CORPORATION		Seat of Examiner	Date of Issue
Agent	China Patent Agent (H.K.) Ltd.			May 8, 2009
Patent Application No.	200580002170.2	Application Date	January 7, 2005	Exam Dept
Title of Invention	LOAD DISTRIBUTING METHOD			

First Office Action

(PCT application entering into the national phase)

1. ☒ Under the provision of Art. 35, para. 1 of the Patent Law, the examiner has made an examination as to substance of the captioned patent application for invention upon the request for substantive examination filed by the applicant

☐ Under the provision of Art. 35, para. 2 of the Patent Law, the Chinese Patent Office has decided to conduct an examination of the captioned patent application for invention on its own initiative.

2. ☒ The applicant requests that

the filing date Jan 9, 2004 at the JP Patent Office be taken as the priority date of the present application,

the filing date Sep 7, 2004 at the JP Patent Office be taken as the priority date of the present application,

the filing date Jan 05, 2005 at the JP Patent Office be taken as the priority date of the present application.

3. ☐ The following amended documents submitted by the applicant cannot be accepted for failure to conform with Art. 33 of the Patent Law:

☐ the Chinese version of the annex to the International preliminary examination report.

☐ the Chinese version of the amended documents submitted according to the provision of Art. 19 of the Patent Cooperation Treaty.

☐ the amended documents submitted according to the provision of Art. 28 or Art. 41 of the Patent Cooperation Treaty.

☐ the amended documents submitted according to the provision of Rule 51 of the Implementing Regulations of the Patent Law.

See the text portion of this Office Action for detailed reasons why the amendment cannot be accepted.

4. ☒ Examination is conducted on the Chinese version of the initially-submitted international application.

☐ Examination is conducted on the following document(s):

☐ page _____ of the description, based on the Chinese version of the initially-submitted international application documents;

page _____ of the description, based on the Chinese version of the annex to the international preliminary examination report;

page _____ of the description, based on the amended documents submitted according to the provision of Art. 28 or Art. 41 of the Patent Cooperation Treaty;

page _____ of the description, based on the amended documents submitted according to the provision of Rule 51 of the Implementing Regulations of the Patent Law.

☐ claim(s) _____, based on the Chinese version of the initially-submitted international application documents;

claim(s) _____, based on the Chinese version of the amended documents submitted according to the provision of Art. 19 of the Patent Cooperation Treaty;

claim(s) _____, based on the Chinese version of the annex to the international preliminary examination report;

claim(s) _____, based on the amended documents submitted according to the provision of Art. 28 or Art. 41 of the Patent Cooperation Treaty;

claim(s) _____, based on the amended documents submitted according to the provision of Rule 51 of the Implementing Regulations of the Patent Law.

☐ Fig(s) _____, based on the Chinese version of the initially-submitted international application documents;

Fig(s) _____, based on the Chinese version of the annex to the international preliminary examination report;

Fig(s) _____, based on the amended documents submitted according to the provision of Art. 28 or Art. 41 of the Patent Cooperation Treaty;

Fig(s) _____, based on the amended documents submitted according to the provision of Rule 51 of the Implementing Regulations of the Patent Law.

5. ☒ The following reference document(s) is/are cited in this Office Action (its/their serial

number(s) will continue to be used in the subsequent course of examination):

Serial No.	Number or Title(s) of Document(s)	Date of Publication (or filing date of interfering application)
1	JP 特开 2003-188907A	July 7, 2003
2		
3		
4		

6. Concluding comments on the examination:

☐ On the description:

- ☐ What is stated in the application comes within the scope of that no patent right shall be granted as prescribed in Art. 5 of the Patent Law.
- ☐ The description is not in conformity with the provision of Art. 26, para. 3 of the Patent Law.
- ☐ The description is not in conformity with the provision of Art. 33 of the Patent Law.
- ☐ The drafting of description is not in conformity with the provision of Rule 18 of the Implementing Regulations.

☒ On the claims:

- ☒ Claim(s) 27-39, 42 come(s) within the scope of that no patent right shall be granted as prescribed in Art. 25 of the Patent Law.
- ☒ Claim(s) 1 has/have no novelty as prescribed in Art. 22, para. 2 of the Patent Law.
- ☒ Claim(s) 3-5, 14 has/have no inventiveness as prescribed in Art. 22, para. 3 of the Patent Law.
- ☐ Claim(s) _____ has/have no practical applicability as prescribed in Art. 22, para. 4 of the Patent Law.
- ☐ Claim(s) _____ is/are not in conformity with the provision of Art. 26, para. 4 of the Patent Law.
- ☐ Claim(s) _____ is/are not in conformity with the provision of Art. 31, para. 1 of the Patent Law.
- ☒ Claim(s) 2, 8-10, 12, 13, 15, 20, 25, 26, 40 is/are not in conformity with the provisions of Rule 20 of the Implementing Regulations.
- ☐ Claim(s) _____ is/are not in conformity with the provision of Art. 9 of the Patent Law.
- ☐ Claim(s) _____ is/are not in conformity with the provision of Rule 23 of the Implementing Regulations.

See the text portion of this Office Action for detailed analysis of the above concluding comments.

7. Based on the above concluding comments, the examiner deems that

- ☐ the applicant should make amendment to the application document(s) according to the requirements put forward in the text portion of this Office Action.
- ☒ the applicant should expound in his/its observations why the captioned patent application is patentable and make amendment to what is not in conformity with the provisions pointed out in the text portion of this Office Action, otherwise, no patent right shall be granted.
- ☐ the patent application contains no substantive content(s) for which a patent right may be granted, if the applicant has no sufficient reason(s) to state or his/its stated reason(s) is/are not sufficient, said application will be rejected.
- ☐

8. The applicant should note the following items:

- (1) Under Art. 37 of the Patent Law, the applicant should submit his/its observations within four months from the date of receipt of this Office Action; if, without any justified reason(s), the time limit for making written response is not met, said application shall be deemed to have been withdrawn.
- (2) The amendment made by the applicant to said application should be in conformity with the provision of Art. 33 of the Patent Law, the amended text should be in duplicate and its form should conform with the related provisions of the Guide to Examination.
- (3) If no arrangement is made in advance, the applicant and/or the agent shall not come to the Chinese Patent Office to have an interview with the examiner.
- (4) The observations and/or amended text should be sent to the Receiving Section of the Chinese Patent Office by mail or by personal delivery. If not sent to the Receiving Section by mail or by personal delivery, the document(s) will have no legal effect.

9. This Office Action consists of the text portion totalling 3 page(s) and of the following attachment(s):

- ☒ 1 copy(copies) of the reference document(s) totalling 8 page(s).

第一回審査意見通知書

CPCL0653033P

出願番号：2005800021702

本願を審査した結果、具体的に以下の審査意見を出す。

一、請求項 27～39、42 の保護請求する主題は、特許法第 25 条第 1 項第 2 号に規定される知的活動の規則と方法に属し、特許権を付与することができない。

1. 請求項 27、28、42 は、ノードの制御プログラムを保護請求している。プログラム自身は、人の思惟活動の結果であり、技術手段を採用していない或いは自然規律を利用していないし、技術課題を解決していなく技術効果も生み出していなく、技術案を構成しない。従って、請求項 27、28、41 の保護請求する主題は、特許法第 25 条第 1 項第 2 号に規定される知的活動の規則と方法に属し、特許権を付与することができない。

請求項 29～39 は、請求項 28 を直接又は間接に引用した。それらの限定部分も、プログラムを更に限定したものである。上記と同じ理由により、請求項 29～39 の保護請求する主題は、特許法第 25 条第 1 項第 2 号に規定される知的活動の規則と方法に属し、特許権を付与することができない。

二、請求項 1 は、特許法第 22 条第 2 項に規定される新規性を備えない。請求項 3～5、14 は、特許法第 22 条第 3 項に規定される進歩性を備えない。

1. 請求項 1 は、負荷分散方法を保護請求している。引例 1 (JP 特開 2003-188907A, 第 0035～0039 段落、図 4、5 参照) は、ノードの負荷分散方法を開示し、かつ具体的に以下の特徴を開示した。即ち、該ノード (請求項 1 の送信側ノードに相当する) は、移動局 (請求項 1 のノードに相当する) からの受信状態報告 (請求項 1 の経路状態情報に相当する) に基づき、ルータ表を更新して、マルチ候補伝達経路から、伝達経路を選択することができる。該ノードは、第 0 個から第 N 個のルータ情報の順番に基づき、順次に候補伝達経路を

選択し、かつ選択された候補伝達経路にデータパケット（請求項 1 の送信履歴に相当する）を送信する。タイマーの時間内に応答 ACK データパケットを受信しない場合、ルータ情報表における対応する第 n 個の候補伝達経路から優先度が低下する。引例 1 には、送信済みパケットの識別情報について、明確な文字記載がないが、応答 ACK データパケットは、送信済みパケットに対する確定であり、その中に必ず送信済みパケットの識別情報が含まれるに違いない。言い換えれば、引例 1 は、既に上記特徴を示唆した。上記から分かるように、請求項 1 の全ての技術特徴は、既に引例 1 に開示された。それに、技術分野、解決する技術課題、技術案及び予期効果も同じである。従って、請求項 1 の保護請求する技術案は、特許法第 22 条第 2 項に規定される新規性を備えない。

2. 請求項 3～5 は、それぞれ請求項 1 を引用した。当業者にとって、経路状態情報は、経路の遅延、通信速度又は負荷を含むのは、本分野の慣用技術手段である。従って、引例 1 に基づき、本分野の慣用技術手段を組み合わせ、請求項 3～5 の技術案を得るのは、当業者にとって自明なことである。請求項 3～5 の保護請求する技術案は、突出した実質的特徴及び顕著な進歩を有しない。よって、特許法第 22 条第 3 項に規定される進歩性を備えない。

3. 請求項 14 は、ノードを保護請求している。引例 1（上記と同じ）は、ノードを開示し、かつ具体的に以下の特徴を開示した。即ち、該ノードは、移動局からの受信状態報告（請求項 14 の経路状態情報に相当する）に基づき、ルータ表を更新して、マルチ候補伝達経路から、伝達経路を選択することができる。該ノードは、第 0 個から第 N 個のルータ情報の順番に基づき、順次に候補伝達経路を選択し、かつ選択された候補伝達経路にデータパケット（請求項 14 の送信履歴に相当する）を送信する。タイマーの時間内に応答 ACK データパケットを受信しない場合、ルータ情報表における対応する第 n 個の候補伝達経路から優先度が低下する。引例 1 には、送信済みパケットの識別情報について、明確な文字記載がないが、応答 ACK データパケットは、送信済みパケットに対する

確定であり、その中に必ず送信済みパケットの識別情報が含まれるに違いない。言い換えれば、引例 1 は、既に上記特徴を示唆した。請求項 14 を引例 1 に比べて、区別する所は、請求項 14 のノードが 1 つの手段を備えることである。しかし、引例 1 のノードは、既に該手段の機能を実現している。当業者にとって、その機能を実現することを知った上、1 つの手段を設置して、その機能を実現することは、実際の必要に応じて設定することができる。これは、本分野の慣用技術手段である。従って、引例 1 に基づき、本分野の慣用技術手段を組み合わせ、請求項 14 の技術案を得るのは、当業者にとって自明なことである。請求項 14 の保護請求する技術案は、突出した実質的特徴及び顕著な進歩を有しない。よって、特許法第 22 条第 3 項に規定される進歩性を備えない。

三、請求項 2、8～10、12、13、15、20、25、26、40 は、特許法実施細則第 20 条第 1 項における明瞭さの規定に合致できない。

1. 請求項 2 は、不明瞭である。①請求項 2 に記載の「その経路状態の経路状態情報と、この経路状態情報が有効となる時刻又はパケットの識別情報を記憶する」とは、経路状態情報、或いはこの経路状態情報が有効となる時刻又はパケットの識別情報を記憶することを意味するか、それとも三者の何れかを記憶することを意味するかが、分らない。②「経路状態情報と、前記経路状態情報が有効となる時刻以降のパケットの送信履歴、又は前記送信済みパケットの識別情報で特定される」とは、経路状態情報、或いは前記経路状態情報が有効となる時刻以降のパケットの送信履歴又は前記送信済みパケットの識別情報で特定されることを意味するか、それとも三者の何れかで特定されることを意味するかが、分らない。③第 7 行に記載の「前記送信済みパケット」は、引用基礎がない。「送信済みパケットの識別情報」と、第 3 行に記載の「パケットの識別情報」とは、同じものを指すかどうか分らない。

2. 請求項 8 は、請求項 1 を引用した。そのうち、「パケットを送信する経路として、受信側ノードでの受信完了時刻の推定値が最も早い経路を選択する」

このうち、推定の依拠は、何であるか？それは、請求項1の第2～7行の情報に関連するか否かが分からない。

請求項9は、請求項1を引用した。そのうち、「パケットを送信する経路として、受信側ノードで特定時刻までに受信完了できるデータ量の推定値が最大の経路を選択すること」のうち、推定値の推定依拠は、何であるか、それは、請求項1の第2～7行に記載の情報に関連するか否かが分からない。

請求項10に記載の「推測される現在の経路状態に応じて」について、推測の依拠は何であるか？それは、請求項1の第2～7行に記載の情報に関連するか否かが分からない。

3. 請求項12は、不明瞭である。①「経路選択又は送信中断の判断」という記述について、それが引用した請求項1に「送信中断」が出現していない。そこで、この「送信中断」と請求項1に記載の方法とは、どんな関連を有するかが分からない。②「送信データ」と請求項1の第3行に記載の「パケット」とは、同じものを指すかが分からない。もし、同じものを指すなら、同一の名称を採用すべきである。異なるものを指すなら、出願人は、解釈を行うべきである。

4. 請求項13の第5行、第7行に記載の「前記選択された」は、引用基礎がない。

請求項26の第6行にも同じ欠陥が存在している。

5. 請求項15は、不明瞭である。①第2行に記載の「送信ノード」と第1行に記載の「ノード」とは、同じものを指すかが分からない。同じものを指すなら、同一の名称を採用すべきである。異なるものを指すなら、出願人は、解釈を行うべきである。②第4行に記載の「パケットの識別情報」は、該技術案では、どんな機能をするかが分からない。

(此処の内容は翻訳又は形式不備に関するものですから、翻訳をご省略させていただきます。)

7. 請求項 26 は、ノードを保護請求しており、「テーブル」を含めている。装置請求項として「テーブル」は、ノードの構造構成部分ではない。このような記述方式は、不明瞭である。

8. (此処の内容は翻訳又は形式不備に関するものですから、翻訳をご省略させていただきます。)

出願人に注意してもらいたいのは、補正が特許法第 33 条の規定に合致しなければならないということである。それと同時に、改めてプリントされる差替え頁を提出すべきであり、原文の写しに補正マークを付けた対照頁も提出すべきであり、かつ補正の依拠と理由を陳述すべきである。

U2054.0155

Notice of Opinion Based on the First Examination

CPEL0653022P

Application No.: 2005800021702

The following opinion is rendered upon an examination of this application:

1. The main subject on which patent protection is claimed by claims 27 through 39, and 42 are under the category of the rules and methods of intellectual activity as stipulated in Article 25, Clause 1-2 of the Law of Patents and it is not possible to grant a patent right.

1. Claims 27, 28 and 42 claim the protection of a control program of a node. The program itself is based on the result of a thinking activity on the part of a human being; it does not use any technical means or natural order; it does not produce any technical effect and does not solve any technical problem and it does not constitute any technical plan.

Accordingly, the subject whose protection is claimed by Claims 27, 28 and 41 belongs to the rules and methods for the intellectual activities as stipulated in Article 25, Clause 1-2 of the Law of Patents. As such, they are not to be granted a patent right.

Claims 29 through 39 either directly or indirectly quote Claim 28. These restrictive parts further restrict the program. By the same reason as mentioned above, the main subject whose protection is claimed by Claims 29 through 39 belongs to the realm of the rules and methods of intellectual activity as stipulated in Article 25, Clause 1-2 of the Law of Patents and no patent right is to be granted.

2. Claim 1 does not possess any novelty as stipulated in Article 22, Clause 2 of the Law of Patents. Claims 3 through 5 and 14 do not have progressiveness as stipulated in Article 22, Clause 3 of the Law of Patents.

1. Claim 1 claims the protection of a load diffusion method. Cited Example 1 (Japanese Patent Toku Kai 2003-188907A, Paragraphs 0035 through 0039 and Figures 4 and 5) discloses a load dispersion method for nodes and specifically discloses the following features:

Said node (which corresponds to the node on the transmission side in Claim 1) can renew the Reuter table on the basis of the receipt status report (which corresponds to the route status information in Claim 1) from a mobile station (which corresponds to the node in Claim 1) and is capable of selecting a transmission route from the multiple candidate transmission route.

Said node selects the candidate transmission routes in turn based on the order of the Reuter information ranging from zero to N and further transmits a data packet (which corresponds to the transmission history in Claim 1) to a candidate transmission route that has been selected.

In the case where the answering ACK data packet has not been received within the time limits of the timer, the order of priority comes down from the nth candidate transmission route corresponding on the Reuter table.

Even though there are no clear-cut descriptions on the identifying information about the packet whose transmission has been completed, the responding ACK packet is a confirmation about the transmitted packet and it is certain that the identifying information about the transmitted packet is contained therein. In other words, Cited Example 1 has already suggested said feature.

As has been described above, all of the technical features of Claim 1 have already been disclosed in Cited Example 1. In addition, the technical field, the technical problem

to be solved, the technical plan and the anticipated effect are also the same. Accordingly, the technical plan whose protection is claimed in Claim 1 does not possess the novelty as stipulated in Article 22, Clause 2 of the Law of Patents.

2. Claims 3 through 5 respectively quote Claim 1. It is a customary technical means for the people in the industry that the information about the route state includes the delay on the route, and communication speed or load. Accordingly, it is self-evident to the people in the industry to acquire the technical plan described in Claims 3 through 5 on the basis of Cited Example 1 by combining the customary technical means in this field. The technical plan whose protection is claimed by Claims 3 through 5 does not possess any outstanding substantive feature nor any conspicuous progressiveness. Accordingly, they do not have the progressiveness as stipulated in Article 22, Clause 3 of the Law of Patents.

3. Claim 14 is for the purpose of claiming protection over the node. Cited Example 1 (same as above) discloses the node and specifically discloses the following features:

Said node is capable of selecting a transmission route from the multiple candidate transmission routes by renewing the Reuter table on the basis of the report on the status of receipt from the mobile station (which corresponds to the route status information in Claim 14). On the basis of the order of Reuter information ranging from zero to N, said node selects a candidate transmission route in turn and transmits the data packet (which corresponds to the transmission history in Claim 14) to the candidate trans-

mission route that has been selected.

In the case where no responding ACK data packet has been received within the time limits of the timer, the order of priority drops the corresponding candidate transmission routes on the Reuter table.

Even though no clear-cut descriptions exist on identifying information about the transmitted packet in Cited Example 1, the responding ACK data packet is a confirmation for the packet whose transmission has been completed and it is certain that the identifying information about the transmitted packet is included therein. In other words, Cited Example 1 has already suggested said feature. What differentiates Claim 14 from Cited Example 1 is the fact that the node in Claim 14 is provided with a means. Nevertheless, the node in Cited Example 1 has already realized the function of said means. On the basis of knowledge about the realization of its function, to set up a certain means for the realization of its function can be done as the actual necessity arises. This is a customary technical means in this field.

Accordingly, it is obvious to the people in the industry to obtain the technical plan described in Claim 14 on the basis of Cited Example 1 by combining a customary technical means in this field .

The technical plan whose protection is claimed by Claim 14 does not have any outstanding substantive feature nor any marked progressiveness. Accordingly, it does not possess the progressiveness as stipulated in Article 22, Clause 3 of the Law of Patents.

3. Claims 2, 8 through 10, 12, 13, 15, 20, 25, 26 and 40 do not conform to the stipulations about clarity as

provided in Article 20, Clause 1 of the Patent Law Enforcement Regulations.

1. Claim 2 lacks clarity.

(1) Claim 2 contains the following descriptions:

The route status information about the route state and the time when this route state information becomes effective or the identifying information about the packet are memorized.

Does the above sentence mean that the route status information or the identifying information about the time when this route status information becomes effective or the identifying information of the packet is memorized? Or does it mean that either one of the three is to be memorized?

(2) "The information about the route status and the transmission history of the packets subsequent to the time when said route status information becomes effective or the identifying information about said transmitted packets are used for specifying." Does this mean that the route status information or the transmission history of the packets subsequent to the time when said route status information becomes effective or the identifying information about said packets whose transmission has been completed is used for specifying? Or, does it otherwise mean either one of the three is used for specifying?

(3) Said transmitted packets on line seven does not have any basis for the quotation. It is not clear whether the identifying information about the transmitted packets means the same as the identifying information about the packets on line three.

2. Claim 8 quotes Claim 1.

"As the route for the transmission of the packet, the route where the assumed value of the receipt completion time of the node on the receiving side was the fastest is selected." About this statement, what is the basis for the assumption? It is not clear whether it is related to the information described on lines two through seven in Claim 1.

Claim 9 quotes Claim 1.

"As the route for the transmission of the packet, the route where the assumed data volume that can be completely received by a specific time by the node on the receiving side is the largest is selected." What is the basis for assuming this assumed value? It is not clear whether it is related to the information described on lines two through seven in Claim 1 or not.

Regarding the expression "in conformity with the route status at present that can be assumed," what is the basis of such an assumption? It is not clear whether it is related to the information described on lines two through seven in Claim 1.

3. Claim 13 is unclear.

(1) Regarding the description "decision about the route selection or an interruption of the transmission," the term "transmission interruption" does not appear in Claim 1 from which it is quoted. It is not clear as to what kind of relationship exists between said interruption of the transmission and the method which is described in Claim 1.

(2) Do the "transmission data" and the packet which is described on line three of Claim 1 indicate the same thing? If they indicate the same thing, the same name should be employed. If they indicate different things, the applicant should offer an explanation.

... line five ...
... is the basis for ...

... line 2 ... Claim 1

4. "Said selected ..." on lines five and seven in Claim 13 has no basis for the quotation.

A similar shortcoming exists on line six in Claim 26.

5. Claim 15 is unclear.

(1) It is not clear whether or not the transmission node on line two indicates the node on line one. If they indicate the same thing, the same appellation should be employed. If they indicate different nodes, the applicant should offer explanations.

(2) Regarding the "identification information about the packet" on line four, it is not clear what function it performs in said technical plan.

(The contents of this space relate to a defect in translation or formality; its translation is omitted in this case.)

7. Claim 26 claims protection for the node, including the table. As a device claim, the table is not a constituent part of the node. Such a descriptive form remains unclear.

8. The contents of this space relate to a defect in translation or formality; its translation is omitted in this case.)

What the applicant should be reminded of is the fact that the amendment should conform to the stipulations in Article 33 of the Law of Patents. At the same time, the replacement pages that are to be printed anew should be submitted. Pages on which correction marks are indicated in the copy of the original document should also be submitted. In addition, the basis and reason for the amendment should be described.